

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

---

**Illinois Bell Telephone Company, Inc.**

**-vs-**

**Global NAPs Illinois, Inc.**

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

**Docket No. 08-0105**

**Complaint pursuant to Section 252(e) of the  
Federal Telecommunications Act of 1996, 47  
U.S.C. §252(e), and Sections 4-1-1, 10-101,  
and 10-108 of the Illinois Public Utilities Act,  
220 ILCS 5/4-101, 220 ILCS 5/10-101, and  
220 ILCS 5/10-108**

---

**REPLY BRIEF OF THE  
STAFF OF THE ILLINOIS COMMERCE COMMISSION**

---

Matthew L. Harvey  
Megan C. McNeill  
Office of General Counsel  
Illinois Commerce Commission

160 North LaSalle Street  
Suite C-800  
Chicago, Illinois 60601  
(312) 793-2877  
(312) 793-8185

October 24, 2008

*Counsel for the Staff of the  
Illinois Commerce Commission*

## Table of Contents

I. THE POI IS LOCATED AT THE AT&T LA GRANGE TANDEM SWITCH.....	1
II. GLOBAL ILLINOIS' CERTIFICATE OF SERVICE AUTHORITY SHOULD BE REVOKED .....	7

The Staff of the Illinois Commerce Commission (“Staff”), by and through its counsel, and pursuant to Section 766.300 of the Commission’s Rules of Practice, 83 Ill. Adm. Code 766.300, respectfully submits its Initial Brief in the above-captioned matter.

As a preliminary matter, the Staff notes that it will only respond to certain arguments in the parties’ respective Initial Briefs that, in its view, warrant specific response. Staff does not waive any positions taken in its Initial Brief or other pleadings in this matter.

Global NAPs Illinois Inc. (hereafter “Global Illinois”) raises two arguments in its Initial Brief to which Staff is compelled to respond. First, Global Illinois argues that the point of interconnection ( hereafter “POI”) which is the demarcation between its and the Illinois Bell Telephone Company (hereafter “AT&T”) network is located on the SONET facility between the Global Illinois office and the AT&T La Grange tandem switch. Global Illinois IB at 1. Second, Global Illinois argues that the Commission should not revoke its Certificate of Service Authority. The Commission should soundly reject both arguments.

#### **I. The POI is located at the AT&T La Grange Tandem Switch**

The proper, lawful location of the POI is central to resolution of disputed billing matters in this case. As Staff has previously noted, Staff IB at 11, *et seq.*, it is well established that each carrier is responsible for the costs of facilities and carrying traffic on its own side of the POI. See, e.g., Arbitration Decision at 81, MCI Metro Access Transmission Services, Inc., MCI WorldCom Communications, Inc., and Intermedia Communications Inc.: Petition for Arbitration of Interconnection Rates, Terms and Conditions, and Related Arrangements with Illinois Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996, ICC Docket No. 04-0469

(November 30, 2004); Arbitration Decision at 22, AT&T Communications of Illinois, Inc., TCG Illinois and TCG Chicago: Verified Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements With Illinois Bell Telephone Company (SBC Illinois) Pursuant to Section 252(b) of the Telecommunications Act of 1996, ICC Docket No. 03-0239 (August 26, 2008). Accordingly, all issues in this proceeding, save those associated with terminating traffic and certification, turn on the question of where the POI is located.

Global NAPs Illinois Inc. (hereafter “Global Illinois”) appears to understand this, asserting that “the important decision that must be made by the Commission [in this proceeding] is simple: Where is the point of interconnection (“POI”) between AT&T’s network and Global[ Illinois]’s network. Global Illinois IB at 1. This statement is the only correct statement that Global Illinois makes, however.

Global Illinois asserts that the Commission’s *Arbitration Decision* in Global NAPs, Inc.: Petition for Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Company d/b/a Ameritech, ICC Docket No. 01-0786 (May 14, 2002) (hereafter “Arbitration Decision”), authorized Global Illinois to locate the POI at any technically feasible location on the AT&T network. Global Illinois IB at 1. This statement was true at the time of the Arbitration Decision. However, the Arbitration Decision did not and does not authorize Global Illinois to relocate the POI at will. This is fatal to Global Illinois’ argument, for the following reasons.

As the Staff detailed at length in its Initial Brief, Staff IB at 12-16, the Commission’s Arbitration Decision does not constitute a license for Global Illinois to

relocate the POI to wherever it elects on AT&T's network without notice to AT&T. Instead, the Arbitration Decision authorized Global NAPs to establish a single POI on AT&T's network, the location to be designated in an interconnection agreement (hereafter "ICA") between the parties. After all, the exclusive purpose of arbitration proceedings under Section 252(b) of the federal Act, 47 U.S.C. §252(b), is to establish the specific terms and conditions of ICAs. Section 252(b)(2)(A) of the federal Act, 47 U.S.C. §252(b)(2)(A) authorizes carriers to submit petitions for arbitration to state Commissions, setting forth, among other things, unresolved issues, 47 U.S.C. §252(b)(2)(A)(i), and each party's position on each unresolved issue. 47 U.S.C. §252(b)(2)(A)(ii). The state Commission before which the petition for arbitration is filed is then authorized to resolve each unresolved issue, 47 U.S.C. §252(b)(4)(C), and set a schedule for implementation of the state Commission's arbitration decision, in the form of an ICA. 47 U.S.C. §252(c)(3).

The Commission has, likewise, made it clear that the purpose of arbitration decisions is to resolve issues that parties negotiating ICAs are unable to resolve, so that ICAs can be formed. In its Arbitration Decision in XO Illinois, Inc.: Petition for Arbitration of an Amendment to an Interconnection Agreement with Illinois Bell Telephone Company Pursuant to Section 252(b) of the Communications Act of 1934, as Amended, ICC Docket No. 04-0371 (September 9, 2004), the Commission noted that:

**[We are] obligated by the Federal Act to impose conditions and establish rates in the ICA that appropriately implement the substantive requirements of the law. The carriers, in turn, are required to present an ICA for approval that meets statutory requirements and FCC regulations.** These outcomes are far more difficult when the parties have not earnestly negotiated or presented clear and concise issues for final resolution. Absent diligent negotiations, interconnection without arbitration is less likely. Absent carefully framed

and properly narrowed issues for arbitration, a complete, unambiguous and approvable ICA is less likely.

Id. at 5 (emphasis added)

In short, as the Commission has recognized, Section 252(b) arbitration is not, as Global Illinois suggests, intended to confer, nor does it confer, rights independent of an ICA. Rather, the purpose of such arbitration is to resolve disputed issues so that ICAs can be concluded and implemented.

This clearly establishes the proper context to review Global Illinois' assertions. In its Petition for Arbitration that initiated the Section 252(b) arbitration proceeding leading to the Arbitration Decision, Global Illinois requested a Commission decision as follows:

[Global Illinois] may establish a single POI, including but not limited to a fiber optic meet-point, allowing efficient fiber-optic facilities for the exchange of all traffic. Further, the Commission should order the Parties to implement [Global Illinois]' proposed contract language included in Exhibit B.

Global Illinois Petition, ¶43, ICC Docket No. 01-0786 (November 30, 2001)

In the Arbitration Decision, the Commission determined that "Global [Illinois] should be permitted to establish one POI per LATA at any technically feasible location in [AT&T]'s network[.]" and that "[AT&T] and Global [Illinois] should be responsible both financially and physically on its side of the single POI." Arbitration Decision at 8. Global Illinois' proposed contract language, as set forth in Exhibit B to its Petition, was identical to the language ultimately adopted. Global Illinois Petition, Appendix NIM<sup>1</sup> at 7, ¶¶3.4.6; 3.4.7.4.<sup>2</sup>

---

<sup>1</sup> NIM is an acronym for network interconnection methods.

<sup>2</sup> All documents related to ICC Docket No. 01-0786 may be found in their entirety on the Illinois Commerce Commission e-docket system, by searching that docket number.

AT&T and Global Illinois concluded, and the Commission approved an ICA, that incorporated the terms of the Arbitration Decision. Staff IB at 14; see *a/so* Order, Illinois Bell Telephone Company (SBC Illinois) and Global NAPs Illinois, Inc.: Joint Petition for Approval of Interconnection Agreement dated February 10, 2003, pursuant to 47 U.S.C. § 252, ICC Docket No. 03-0296 (July 26, 2003) (Commission approves Global Illinois – AT&T ICA Illinois incorporating arbitrated terms). The specific terms of the ICA in question are fatal to Global Illinois’ “the POI is wherever we say it is” argument.

As the Staff noted in its Initial Brief, the Global Illinois – AT&T ICA that resulted from the Arbitration Decision contains an “Appendix NIM”, which in turn contains terms and conditions which establish the location of the POI. Global Illinois – AT&T ICA, Appendix NIM, ¶3.4.7.<sup>3</sup> This contractual provision states that the parties agree to use the network interconnections methods and POI location set forth in Paragraph 3.4.7.4 of Appendix NIM, Appendix NIM, ¶3.4.7, which in turn provides for the following design for interconnection:

Both [Global Illinois] and [AT&T] each provide two fibers between their locations to terminate at each parties' FOT This design may only be considered where existing fibers are available and there is a mutual benefit to both Parties. [AT&T] will provide the fibers associated with the working side of the system. [Global Illinois] will provide the fibers associated with the protection side of the system. The Parties will work cooperatively to terminate each other's fiber in order to provision this joint point-to-point linear chain SONET system. Both Parties will work cooperatively to determine the appropriate technical handoff for purposes of demarcation and fault isolation. **The POI will be defined as being at the [AT&T] location.**

ICA, Appendix NIM, ¶3.4.7.4 (emphasis added)

---

<sup>3</sup> The ICA may be found in its entirety on the Illinois Commerce Commission e-docket system, by searching Docket No. 03-0296. The facts as set forth are also the subject of testimony adduced from AT&T witness Patricia H. Pellerin. AT&T Ex. 1.0 at 10.

In short, Global Illinois is correct that the resolution of the POI issue is a simple one. Global Illinois is, however, absolutely wrong about every other aspect of the POI issue. The POI is, by the specific terms of the Commission approved ICA between the parties, located at the AT&T switch in La Grange.

The location of the POI at the AT&T La Grange tandem resolves the ordering of facilities question in favor of AT&T as well. If, as the Commission determined, Arbitration Decision at 8, each party is responsible for the cost of providing facilities and transporting traffic on its own side of the POI, then Global Illinois is financially responsible for the facilities necessary to transport traffic to the AT&T La Grange tandem. It is therefore responsible for the facilities that it ordered from AT&T to accomplish this.

In its Initial Brief, Global Illinois assiduously avoids any mention of the specific terms and conditions of the ICA, relying instead on the Arbitration Decision. This failure is quite inexplicable on its face, *since the provision locating the POI was Global Illinois' proposed contract language in the first place*. In other words, Global Illinois is, in this proceeding, attempting to repudiate *contract language that it proposed itself*, and that *the Commission adopted based on Global Illinois' arguments*.

Global Illinois' reasons for trying to avoid the consequences of its own election – a changed business plan, discovery that its request was a bad idea, or changed business conditions – simply do not matter. The fact that Global Illinois altered its business plan after Commission approval of the ICA is not a basis for Global Illinois to unilaterally relocate the POI in a manner contrary to the ICA. Further, Global Illinois'

argument, like so much of its case, smacks of a *post hoc* rationalization of its failure to pay any money whatever to AT&T, and should be dismissed as such.

In short, Global Illinois's arguments regarding the location of the POI are contrary to the Commission approved ICA between the parties and therefore absolutely without merit. The Commission should reject them.

## **II. Global Illinois' Certificate of Service Authority Should Be Revoked**

Staff recommends that the Commission revoke Global Illinois' Certificates of Service Authority based on evidence that Global Illinois lacks adequate financial resource and abilities and lacks adequate managerial resources and abilities required by Sections 13-403 and 13-405 of the Public Utilities Act. Staff IB at 27, 41-42, 220 ILCS 5/13-403, 220 ILCS 5/13-405. Global Illinois argues that it has had to modify its business plan since it received its certificates and that whether a carrier has modified its business plan should not lead to revocation of certificates. Global Illinois IB at 24. Global Illinois contends that the changes in its business plan are justified based on "business considerations" and changes in technology since Global obtained its certificates. Id. at 24-25. Global Illinois states, "[t]he question should not be whether a carrier has modified how it runs its business since it obtained its certificates. Rather, the question should be are they [sic] currently providing service to their [sic] customers in a manner that shows technical and managerial competence and financial viability." Id. IB at 24.

Contrary to Global Illinois' assertion, Staff does not contend that Global Illinois' certificates should be revoked based on the fact that it has modified its business plan.

Rather, Staff argues that Global Illinois must show and maintain sufficient technical, financial, and managerial resources and abilities to provide service in Illinois regardless of whether Global Illinois has made a change in its business plan. Evidence adduced in this proceeding overwhelmingly shows that Global Illinois no longer possesses adequate financial or managerial resources and abilities and Global Illinois has clearly failed to rebut the evidence against it. Staff IB at 26-42. Global Illinois cannot use its “modified business plan” as an excuse to escape what is required of it under the PUA. This “excuse” is nothing more than a red herring produced by Global Illinois in a desperate attempt to divert the Commission’s attention from the fact that Global Illinois lacks the financial and managerial resources and capabilities required of all holders of Commission certificates.

As Staff has stated, Global Illinois lacks the financial resources and abilities to maintain certification. Global Illinois has no employees and no assets. Id. at 27, Global Illinois Ex. 3 at 4-7, 9.<sup>4</sup> Since Global Illinois has no employees, and no assets other than its Certificate of Service Authority, it is clear that the Commission must look elsewhere for technical, managerial and financial resources and abilities.

It is Global Illinois’ contention that its affiliate Global NAPs will guarantee all obligations of Global Illinois, Global Illinois Ex. 1.0, Sched. JS-5; however, Global NAPs is, at best, unable to provide financial records to show its financial state. See, e.g., Tr. at 237-38. Staff believes that Global Illinois’ inability to provide a showing of adequate financial resources and capabilities of its financial guarantor, Global NAPs, is a failure to

---

<sup>4</sup> Global Illinois made representations in its Application for Certificate of Service Authority including its intent to invest \$100,100 in facilities, Staff Ex. 1.0 at 6-7, a further investment of \$1 million in Illinois, Id. at 8-9, and intent to hire two employees in Illinois. Id. at 9-11. However, Global Illinois has not fulfilled any of the representations made since it has no assets or employees in Illinois. Global Ex. 3 at 4, 6, Tr. 224-25.

satisfy the requirements of the PUA, and is therefore grounds for revocation of Global Illinois' certificate. Staff IB at 31. In addition, Global NAPs is currently subject to substantial court judgments and lacks the sufficient assets to obtain an appeal bond. AT&T Ex. 1.1, Sched. PHP-27 at 29, 2006 U.S. Dist. Lexis 65458 at 22-24, AT&T Cross Examination Ex. 6, Attachment Ex. C. Staff continues to be of the opinion that this shows that Global NAPs Inc. is unable to satisfy its own financial obligations, let alone the financial obligation of Global Illinois. Staff IB at 34. As such, its guarantee of Global Illinois' obligations is valueless.

Global Illinois also lacks the managerial resources and abilities to maintain certification. Global Illinois maintains that it provides managerial and administrative resources from its affiliates Global NAPs and Global Realty. Tr. at 225-26, Global Illinois IB at 24. However, evidence in the form of a federal court ruling shows that Global NAPs either does not maintain adequate records, or intentionally destroys them in order to avoid court-ordered production of them, and the legal jeopardy that would attach to such production. Staff IB at 34-38. See *Second Amended Ruling Re: Plaintiff's Redacted Motion for Default Judgment, Plaintiff's Motion for Default Judgment, and Defendant's Motion to Modify the Court's October 19, 2007 Order* in Southern New England Telephone Co v. Global NAPs, Inc., et al, 3:04 – cv- 2075, 2008 U.S. Dist. Lexis 49061 (D. Conn. July 1, 2008). Global NAPs' repeated violations of court orders, taken alone, demonstrate its lack of managerial abilities. In light of these violations, the Commission clearly cannot rely on Global NAPs' management – which is in fact Global Illinois' management, since Global Illinois has none independent of Global NAPs – to file accurate and truthful reports, responses to data requests and other documents on

behalf of Global Illinois. Staff IB at 38. In fact, Global NAPs has already refused to produce financial documents in this proceeding by refusing to produce financial resources to back Global NAP's alleged "guarantee" of Global Illinois obligations.

Global Illinois' argument that the Commission has received no complaints, therefore demonstrating good management, utterly fails. Id. at 39. Global Illinois has no customers and provides services exclusively to affiliates, which in turn provide services exclusively to carrier customers, some who may be using Global Illinois' service to avoid paying intercarrier compensation to terminating carriers. AT&T Cross-Examination Ex. 9P, Resp. 2-4; see also Global Ex. 1.0 at 10, Staff IB at 39. It is entirely possible that Global Illinois has received no complaints because its carrier customers are avoiding compensation obligations. Staff IB at 39.

Furthermore, the Commission should not be surprised that an entity which provides no service and has no customers is also the subject of no complaints. Global Illinois is, apart from possessing a Certificate of Service Authority, a nonentity. It seems unlikely that any customer of the general Global enterprise has any knowledge of its existence. Thus, the fact that no complaints have been received against Global Illinois is no more surprising than the fact that no complaints have been received against counsel table in Commission Hearing Room N-808, since neither engages in any activity likely to inspire complaints.

Lastly, the fact that Global Illinois only possesses a certificate and relies on Global Networks, an uncertificated entity, to provide all actual services is very troubling to Staff and is further evidence of lack of managerial resources and abilities.

The Commission should find that Global Illinois lacks sufficient financial and managerial resources and abilities to retain its Certificates of Service Authority. Staff's recommendation that the Commission revoke Global Illinois' certificates is not based in any manner upon Global Illinois' purported or actual modification of its original business plan. Rather, Staff's recommendation is based on the fact that evidence has shown that Global Illinois can no longer meet the requirements of Sections 13-403 and 13-405 of the Public Utilities Act and the fact that Global Illinois has failed to rebut the evidence against it.

WHEREFORE, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in their entirety consistent with the arguments set forth herein.

Respectfully submitted,

/s/

Matthew L. Harvey  
Megan C. McNeill  
Counsel for the Staff of the  
Illinois Commerce Commission

Illinois Commerce Commission  
Office of General Counsel  
160 North LaSalle Street  
Suite C-800  
Chicago, Illinois 60601  
(312) 793-2877

October 24, 2008